

1 Brent A. Hawkins (CSB # 314266)
2 **MORGAN, LEWIS & BOCKIUS LLP**
3 One Market, Spear Street Tower
4 San Francisco, CA 94105-1596
5 Tel: (415) 442-1000
6 Fax: (415) 442-1001
7 brent.hawkins@morganlewis.com

8 Kevin J. Post (*pro hac vice* forthcoming)
9 **ROPES & GRAY LLP**
10 1211 Avenue of the Americas
11 New York, NY 10036-8704
12 Tel: (212) 596-9000
13 Fax: (212) 596-9090
14 kevin.post@ropesgray.com

15 *Attorneys for Applicants*
16 **HP Inc. and HP Deutschland GmbH**

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION
14

15 *In re Ex Parte* Application for an Order
16 Pursuant to 28 U.S.C. § 1782 Authorizing
17 Discovery for Use in Foreign Proceedings of
18 HP Inc. and HP Deutschland GmbH,
19 Applicants.

Case No. 5:24-mc-80120

20 **DECLARATION OF KEVIN J. POST
21 IN SUPPORT OF EX PARTE
22 APPLICATION OF HP INC. AND HP
23 DEUTSCHLAND GMBH FOR AN
24 ORDER PURSUANT TO 28 U.S.C.
25 § 1782 TO OBTAIN DISCOVERY FOR
26 USE IN FOREIGN PROCEEDINGS**

27 Pursuant to 28 U.S.C. § 1746, I, Kevin J. Post, declare as follows:

28 1. I am an attorney admitted to practice law in the State of New York and the District
of Columbia. I am a partner at the law firm of Ropes & Gray LLP, counsel for HP Inc. and HP
Deutschland GmbH (individually and collectively, "HP") in the above-captioned proceeding
pursuant to 28 U.S.C. § 1782.

2. I submit this Declaration in support of HP's *Ex Parte* Application for an Order
Pursuant to 28 U.S.C. § 1782 to Obtain Discovery for Use in Foreign Proceedings (the

1 “Application”). I make this Declaration based on my own personal knowledge and documents that
2 I have reviewed.

3 3. I have been engaged to represent HP in negotiations with Nokia Technologies Oy
4 (“Nokia”) since November 2020.

5 4. I understand that Nokia first contacted HP regarding a possible license to its patents
6 in late 2019. In 2021, those discussions expanded to include Nokia’s patents that Nokia purports
7 are essential to the H.265 video coding standard (also known as High Efficiency Video Coding, or
8 HEVC), which was developed and published by the International Telecommunications Union’s
9 Telecommunications Standardization sector, with Nokia’s participation. By declaring its patents
10 essential, Nokia committed to grant licenses to its essential patents on reasonable and non-
11 discriminatory (“RAND”) terms.

12 5. The parties continued negotiations toward a license until August 2022. By email on
13 August 1, 2021, HP proposed a phone call on August 12, 2022, with specific proposed discussion
14 topics.

15 6. Nokia never responded to HP’s August 1, 2022, request for a phone call. Instead,
16 Nokia remained silent for over a year before initiating patent infringement litigation in several
17 jurisdictions around the world, including in the United States, Brazil, and Germany.

18 7. In the United States, Nokia asserts that HP has infringed several U.S. patents that
19 Nokia alleges are essential to the H.264 and H.265 video coding standards. Nokia first sued HP in
20 the District of Delaware in Civil Action No. 23-cv-1237-GBW. Then, Nokia and its ultimate parent
21 entity, Nokia Corporation, sued HP in the International Trade Commission (“ITC”), in ITC Inv. No.
22 337-TA-1379 and ITC Inv. No. 337-TA-1380 (collectively, the “ITC Proceedings”).

23 8. In Germany, Nokia asserts that HP has infringed European patents that Nokia alleges
24 are essential to the H.265 video coding standard. I understand that Nokia has filed two patent
25 infringement cases against HP in Germany in the Munich I Regional Court: Case No. 7 O 14901/23
26 (asserting European Patent EP 2 774 375) and Case No. 7 O 14902/23 (asserting European Patent
27 EP 2 375 749) (collectively, the “German Proceedings”).
28

1 9. In the proposed subpoena *duces tecum* attached to HP's Application as **Exhibit A**,
2 HP seeks specific documents related to Nokia's patents and the H.265 standard that I understand are
3 at issue in the German Proceedings: Nokia's license agreements related to the Nokia patents asserted
4 in the German Proceedings or otherwise declared essential to the H.265 standard, Nokia's
5 documents and communications related to the negotiation of those license agreements, and Nokia's
6 documents related to the royalties received under those license agreements.

7 10. If HP's Application is granted, HP would be willing to enter a protective order
8 limiting HP's use of the requested documents to the German Proceedings. A proposed protective
9 order is attached to the Application as **Exhibit B**.

10 11. The document requests in Exhibit A are substantively identical to document requests
11 served by HP to Nokia in the ITC Proceedings. The only differences are that the definitions
12 governing the requests are slightly revised to account for the different forum (this Court and the
13 courts in Germany, instead of the ITC) and the different asserted patents (the European patents
14 asserted in the German Proceedings, instead of the U.S. patents asserted in the ITC Proceedings).
15 Because of the different asserted patents and the focus on the H.265 standard only in the German
16 Proceedings, the definitions governing the requests are also limited to the H.265 standard (instead
17 of both H.264 and H.265).

18 12. Because HP already requested these documents in the ITC Proceedings, Nokia
19 already has produced, or is in the process of producing, the documents requested in Exhibit A. Fact
20 discovery has already ended in ITC Inv. No. 337-TA-1379, and fact discovery ends on May 22,
21 2024, in ITC Inv. No. 337-TA-1380.

22 13. However, the protective orders in the ITC Proceedings only permit HP to use those
23 documents in the ITC Proceedings, and not in any other in any other contexts outside the ITC
24 Proceedings, including other litigations such as the German Proceedings.

25 14. A true and correct copy of the Protective Order in ITC Inv. No. 337-TA-1379 is
26 attached hereto as **Exhibit C**.

27 15. A true and correct copy of the Protective Order in ITC Inv. No. 337-TA-1380 is
28 attached hereto as **Exhibit D**.

1 16. The proposed protective order in Exhibit B is based on the protective orders in the
2 ITC Proceedings, with the revisions necessary to limit HP's use of documents produced in response
3 to Exhibit A to the German Proceedings.

4 I declare under penalty of perjury that the foregoing is true and correct.

5 Executed this 15th day of May 2024, in New York, NY.



Kevin J. Post
ROPES & GRAY LLP
1211 Avenue of the Americas
New York, NY 10036-8704
Tel: (212) 596-9181
Fax: (212) 596-9090
kevin.post@ropesgray.com